



APPROVED MINUTES
CITY OF SCOTTSDALE
CHARTER REVIEW TASK FORCE

MONDAY, OCTOBER 5, 2009

CITY HALL KIVA
3939 N. DRINKWATER BOULEVARD
SCOTTSDALE, AZ 85251

PRESENT: Steven J. Twist, Chair
Susan Bitter Smith (Participated Telephonically)
Jim Derouin
Cindi Eberhardt
Alan Kaufman
Charlie Smith
Lisa Johnson Stone (arrived at 5:57 P.M.)

STAFF: Carolyn Jagger, City Clerk
Sherry Scott, Deputy City Attorney
Brent Stockwell, Senior Advisor

Call to Order/Roll Call

Chairman Twist called the Charter Review Task Force regular meeting to order at 5:01 P.M. Roll call confirmed the presence of Task Force members as noted. Susan Bitter Smith participated telephonically.

1. Approval of Minutes – September 14, 2009

MOTION and VOTE

CINDI EBERHARDT MOVED TO APPROVE THE SEPTEMBER 14, 2009 MINUTES. ALAN KAUFMAN SECONDED. MOTION PASSED 7-0

2. Public Comment

Chairman Twist called for comments from the public.

Michael Kelly, a Scottsdale resident, stated that he feels there is confusion between the two requirements found in Article 1, Section 3-C and Section 3-I, which talk about specific plans. Mr. Kelly stated that we also operate under a State-dictated general plan. Mr. Kelly asked the Task Force members to consider if we need to combine, clarify, or delete one of those definitions, and asked that the Task Force members clarify this language for the charter reader. Mr. Kelly added that Article 2, Section 6-B states that the position of Mayor is addressed as being “ceremonial” with no regular administrative duties, but that involvement in regional affairs may be considered administrative. Mr. Kelly felt the Task Force may want to amend this language in the Charter, as well as the reference to the Mayor Pro Tempore and Vice Mayor concepts.

Glenn Smith, a Scottsdale resident, stated that, after review of the election schedule in the Charter Review Task Force documents on the City’s website, he found the schedule to be very tight. Mr. Smith felt that this proposed schedule does not easily lend itself to obtaining more public input before the spring ballot deadline, and added that this process did not seem very transparent to him. He recommended that the Task Force pursue a way to obtain more comment from the public on the district system of electing City Council members.

Ray Torres, from the ORANGE Coalition, spoke and was given five minutes (Michael Manson ceded his time to Mr. Torres). Mr. Torres comments were on Section 3A, Section A and Section B, and he invited his colleagues from the ORANGE Coalition to make comments, as well.

The first issue Mr. Torres discussed was eminent domain and the 2003 case of the Bailey’s Brake Service in Mesa, explaining that in this case the City of Mesa condemned Baileys Brake Service in an effort to convey that shop into another private entity. Mr. Torres stated that Randy Bailey won that case in court and continues to do business at the corner of Country Club and Main streets.

Mr. Torres spoke about the 2002 Sixth Avenue commercial properties redevelopment areas in Scottsdale and explained that Barbara Espinosa could not be there to speak but was instrumental in marshalling a grass roots effort that presented a petition to the City Council and repealed a condemnation of two areas in the downtown and canal area. Mr. Torres stated that, unfortunately, with that threat of condemnation from the City and over a ten-year period, more than 100 small businesses were impacted and unable or reluctant to make capital investment in their business or sign long-term leases.

In addition, Mr. Torres referenced the Hualapai case, where there were allegations of secrecy and back room dealings concerning the land lease deal up north, which resulted in the condemnation of 6.9 acres. Mr. Torres explained that the case was won by the owner yet the fair market value of that land is yet to be determined by the court, adding that he suspects the City will be making a settlement.

Mr. Torres also spoke about the Chandler intersection case, Kings World of Marble in Phoenix, the Kelo Supreme Court case in New London, Connecticut, and how the City of Anaheim, California amended their city charter in 2007 to include economic development without eminent domain and their perceived economic development success with this amendment.

Mr. Torres conveyed to the members that although he feels the door of private investment in economic development has nearly been shut, he’s very optimistic that vibrancy and vitality will return to cities, including Scottsdale. Mr. Torres stated that the City Council will be faced with

tough decisions regarding development like the McDowell corridor, the Scottsdale airpark, and Chaparral Road.

Nick Dranias, of the Goldwater Institute, discussed the ORANGE Coalition's proposed Charter amendments that were presented during the Task Force's first meeting. Mr. Dranias stated that the ORANGE Coalition created a strong document, which included a policy report that went back several years, and some common sense suggestions for amending the City's Charter. Mr. Dranias stated he had read the City Attorney's suggested amendments on the issue of eminent domain and that although they were a good faith effort, they would change nothing; and similarly, the proposed Prop 207 changes. He encouraged the members to consider and use the ORANGE Coalition's amendment suggestions.

Mr. Dranias referred to Section 3, Subsection A, of the City's Charter, which addresses the powers of the City. The ORANGE Coalition's proposed suggestions are efforts to define and limit the powers of the City with regard to powers of eminent domain. Mr. Dranias stated that Section 3-A refers to the term *public purpose* and stated that case law has rendered this term virtually devoid of meaning because there isn't anything that isn't a public purpose under the law. Mr. Dranias urged the members to use a word that clearly defines what a public use is and urged them to limit eminent domain to a literal public use or define the term very explicitly. Mr. Dranias urged the members to consider augmenting *just compensation* further, as well.

Mr. Derouin asked Mr. Dranias how the legal authority of a city to deal with condemnation is it different than what is provided in the State constitution and State statutes that deal with the issue of condemnation. Mr. Dranias replied that the way to think about the State constitution is as a baseline or the floor by which rights are protected and that charter cities have the authority to elevate the property rights above that baseline, in his review of the law. Mr. Dranias stated that as long as the language seeks to bind Scottsdale's own hands by framing the language in those terms and does not try to lay out general principals of law that might conflict with State law; he felt there wouldn't be a preemption problem.

Susan Bitter Smith asked Mr. Dranias if, in his opinion, this kind of language change is more appropriate to an ordinance than a charter. Mr. Dranias stated that it would depend on your goals and that if changes were only made through an ordinance, they would not be lasting. Mr. Dranias stated that making changes to the Charter would govern the law making powers for this City Council and future ones.

Leonard Gilroy is the Director of Government Reform at the Reason Foundation. Mr. Gilroy stated that he wanted to amplify what was heard earlier but comes from a different perspective. He stated that, in practice, eminent domain tends to be a first resort and that there are many other tools in the economic development toolbox that cities can and should use. Private investment requires a reasonable expectation of return on investment and can only occur in a business climate. Mr. Gilroy stated that the misuse of eminent domain for economic development really helps to destabilize the investment climate and referenced the City of Anaheim's example of achieving major, dramatic redevelopment by incentives such as loosening zoning and other regulations. Mr. Gilroy urged the Task Force members to consider other alternatives carefully.

Lisa Urias, a board member from the ORANGE coalition, spoke about the human side of eminent domain and referenced Jeff Benedict's book, *The Little Pink House: a True Story of Defiance and Courage*. Ms. Urias explained the book is about the Kelo case and is a true David

and Goliath story. Ms. Urias stated that the ORANGE Coalition believes that elected officials are elected to serve all of the community and hopes representatives from this City Council and all elected officials at every level of government understand the fundamental call to act as public servants for all of their constituents.

Steve Hirsch, a Paradise Valley attorney, was invited to speak by the Orange Coalition. Mr. Hirsch explained that he regularly represents property owners and referenced Article 1, Section 3, Paragraphs A, L, and M. Mr. Hirsch cited the Los Arcos Shopping Mall and Steve Ellman, as well as Troy Valentine, who owns The Woodchuck in the Tempe Marketplace area. Mr. Hirsch explained that he led Mr. Valentine and other land owners to a successful effort to receive just compensation for their property. Mr. Hirsch urged the Task Force members to clean up and modernize the City's Charter by putting in the protective language that's been proposed by the Orange Coalition.

Paul Box spoke about working 12 years in city government in Kansas City, Missouri, where there was a divided form of council; four elected at large and four elected by district. The district council members were only interested in their own districts and he felt the district system hurt that city. Mr. Box strongly recommends that the Task Force members shy away from the concept of having districts in Scottsdale. He feels we don't need it and he hopes the Task Force avoids it.

3. Discussion and possible action on City Charter Election Recommendations report and designate a representative to present the report at the October 20 City Council meeting

MOTION

JIM DEROUIN MOVED THAT THE TASK FORCE ADOPT THE CITY COUNCIL REPORT AS PRESENTED, ALAN KAUFMAN SECONDED.

SUSAN BITTER SMITH ASKED THAT THE MOTION BE AMENDED TO DESIGNATE CHAIRMAN STEVE TWIST AS THE TASK FORCE'S REPRESENTATIVE.

JIM DEROUIN AGREED TO AMEND THE MOTION TO ALSO DESIGNATE CHAIRMAN STEVE TWIST TO REPRESENT THE TASK FORCE IN PRESENTING THE REPORT TO THE CITY COUNCIL. ALAN KAUFMAN AGREED.

VOTE

MOTION PASSED 7-0.

4. Discussion and possible action regarding recommendations to the City Council regarding possible amendments to the Scottsdale City Charter

Chairman Twist asked the Task Force members to turn their attention to Article 1, stating it includes many of the provisions addressed by the public comments at tonight's meeting and asked Jim Derouin to introduce the proposed amendment language he brought to the group.

Jim Derouin explained that he worked to create some Prop 207 amendment language to address the authority of the City to deviate from what the State provides with regard to condemnation; noting that Prop 207 provides protections, whereas the whole condemnation discussion really goes beyond what Prop 207 provides. Mr. Derouin stated that he'd like to lay some foundation of the issue, watch a staff presentation on Prop 207, and then have some discussion about it. Mr. Derouin stated that he didn't believe the group was anywhere near being able to vote on something at this meeting.

Sherry Scott clarified earlier comments by Mr. Dranias by stating that the City Attorney's office has not proposed any amendments for Prop 207, but rather responded to Jim Derouin's request to clarify some language that he intended to bring to the Task Force members. Ms. Scott then presented an "Introduction to Prop 207," stating it was a very simple overview of Prop 207, the City's current policies regarding Prop 207, and some examples to create a reference point for what this information means.

Jim Derouin clarified that the amendments were his words and not those of the City Attorney's office, stating further that he worked to present language to the group that addressed both the condemnation issue and the diminution issue. In Section 3-A, Powers of the City, he attempted in two sentences to import from State law what it provides in A) condemnation and public use; and B) diminution of value and getting just compensation for it. Mr. Derouin stated that his proposals were not intended to go beyond State law and that he attempted to clarify the policy of the City of Scottsdale.

There was continued discussion on Article 3, Subsection O. Mr. Derouin stated that for the purposes of what he brought back to the members regarding subsection O, the City should not be asking people coming to the government to waive their rights, noting that *may* is a word they may want to use there. Mr. Derouin explained further that there may be circumstances where the City Council wants to put a waiver on the table as part of the negotiation on a project, noting that the solution is clearly not a simple one.

Mr. Derouin asked Sherry Scott, Deputy City Attorney, for her recommendation on the use of the word *may* in Prop 207, asking specifically what the City's ability is to define public use, fair market value, and other terms discussed in this section. Ms. Scott responded that it is her understanding that eminent domain and condemnation are matters of State law and that the City would have to look at State law and statutes when deciding what to do.

Jim Derouin stated he was not prepared in one week, to bring forward language that would deviate from or attempt to clarify what we see in the Prop 207 definitions from State law.

Sherry Scott stated that any time that State law had a codified law in this area like defining public use, compensation, or condemnation; it would appear that State law has preempted the field and that the City could not do something different. Ms. Scott stated that she thinks it would be a challenge for the City to try to redefine these terms without finding itself in conflict with State law.

Chairman Twist stated he wanted to now turn the issue over to a broader discussion by the group and thanked Mr. Derouin for the good work and introductory explanation.

Alan Kaufman stated that he is in favor of what Mr. Derouin has proposed, but that he would like to put the issue into the correct context from the trenches. Mr. Kaufman explained that most of the concerns discussed tonight flow from the very visceral reaction the public had to the Kelo

case that happened in New London, CT. Mr. Kaufman believes that many groups, such as the ORANGE Coalition, rose up because of this case. Mr. Kaufman believes that in the real world, the city dictates and the landowner acquiesces. Mr. Kaufman cited a 2006 example where he represented a small HOA of about 25 members in Scottsdale, which had a neighbor that was unhappy with the lighting at the community's entrance. This small HOA had to hire many experts and was required to go through the Development Review Board (DRB) process at the City. Here, Mr. Kaufman explained, after complying with all that the City required, the City threatened to stop the DRB hearing on the day it was scheduled unless the HOA signed a waiver and, further, that the City inserted language stating that it was a *voluntary action*, which it was not.

Charlie Smith stated that he has seen both sides of this equation; a developer that comes in and wants the very minimum, which he feels is not in the best interest of the community at large. Mr. Smith explained that he has also seen cases like the ones Mr. Kaufman describes, noting that balancing the two will be a real challenge as both do exist.

Chairman Twist asked the members to continue to take into consideration everything that has been said as they now independently study and prepare for more discussion at the next meeting. Chairman Twist thanked members for their good opening conversation; noting that Charlie Smith framed the issue very well; Alan Kaufman explained a real world perspective; and Jim Derouin developed initial language that could be used to begin discussion and clarification.

5. Review, discuss, and possibly amend draft agenda for October 26, 2009 meeting

Cindi Eberhardt asked the Task Force members and City staff to get materials out one day earlier. Brent Stockwell stated that they will get the final packets out on Thursdays, adding that he will need materials in by end of business on Wednesdays to prepare the packet by Thursday.

ARTICLES 1, 2, AND, TIME PERMITTING, ARTICLE 3 WILL BE DISCUSSED AT THE NEXT MEETING ON OCTOBER 26, 2009. STAFF WAS ASKED TO POST AGENDA PACKETS ONE DAY EARLIER, BY END OF BUSINESS ON THURSDAY.

With no further business to discuss, the meeting adjourned at 7:05 P.M.

SUBMITTED BY:

Linda Pellegrini
Administrative Secretary

REVIEWED BY:

Brent Stockwell
Senior Advisor

Officially approved by the Charter Review Task Force on October 26, 2009